

SERVED: August 11, 1993

NTSB Order No. EM-173

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 23rd day of July, 1993

_____)	
J. W. KIME,)	
Commandant,)	
United States Coast Guard,)	
)	
)	
v.)	Docket ME-141
)	
)	
MARK HAWKER,)	
)	
Appellant.)	
_____)	

OPINION AND ORDER

Appellant challenges a July 26, 1990 decision of the Vice Commandant (Appeal No. 2501) affirming a six-month suspension of his merchant mariner's license (No. 574 383) as ordered by Coast Guard Administrative Law Judge Roscoe H. Wilkes on December 8, 1988.¹ The law judge sustained a charge of negligence in connection with appellant's service as master aboard the SS

¹Copies of the decisions of the Vice Commandant (acting by delegation) and the law judge are attached.

Glacier Bay on July 2, 1987, when it struck a rock in Cook Inlet on a Valdez to Nikishka, Alaska, voyage, with the result that the vessel grounded, was holed, and leaked a substantial quantity of crude oil.² The basis for the charge was appellant's having allowed the pilot to anchor the vessel in an area he and the pilot both knew presented a submerged boulder hazard. We affirm the Vice Commandant's decision.

On appeal to the Board, the appellant for the most part presses the same arguments he presented to the Vice Commandant, who, for reasons fully detailed in his thorough decision, found no merit in appellant's various challenges to the law judge's comprehensive disposition of the matter. We have carefully reviewed appellant's arguments in light of the law judge's and the Vice Commandant's decisions and find in them no reason to disturb the determination of negligence.³ With one exception relating to an argument not presented to the Vice Commandant, only a few general comments on the issues raised in appellant's appeal are warranted.

²The SS Glacier Bay is an oceangoing oil tanker with a length of 774 feet and a beam of 125 feet. The "rock" the vessel hit was later determined to be some 34 feet long by 43 feet wide, and to extend some 30 feet above the otherwise essentially flat seabed.

³Nor are we persuaded that the Vice Commandant erred in concluding that the law judge did not abuse his discretion in refusing the issuance of a subpoena for production of certain pre-1983 licensing records (*i.e.*, exam chartlets), which the law judge believed would amount to evidence that would be either cumulative or not relevant in a proceeding involving navigating admonitions on subsequently issued charts and publications.

Appellant by his appeal seeks to escape any blame for a casualty that the Coast Guard alleged would not have happened had he employed reasonable and prudent judgment in determining how best to accommodate an unexpected enroute delay (of about nine hours) in his ability to offload his cargo at Nikishka. Although he argues at length that his reliance on his pilot's greater knowledge and experience in navigating Cook Inlet should be exonerating or mitigating, he has not shown error in the law judge's finding that the appellant fully concurred in the pilot's recommendation as to where the vessel should anchor until a berth at Nikishka was available.

More to the point, we think, appellant has not identified any circumstance relating to the pilot's asserted superior local knowledge which would serve to excuse either of them from the consequences of their failure to heed numerous published warnings calling not just for the exercise of extreme caution in navigating in the eastern portion of Cook Inlet, but also for the avoidance of areas within the shoals, such as the location where the Glacier Bay grounded, whose depths might be less than 30 feet below the vessel's draft.⁴ The pilot's relatively recent, uneventful experience with several other vessels of similar (but lesser) draft in the general vicinity of the grounding may have

⁴In a companion case, the law judge sustained a charge of negligence against the pilot on the Glacier Bay and imposed a six-month suspension of his merchant mariner's license. The pilot's appeal of the Commandant's affirmance of that decision to the Board was dismissed as untimely. *See Commandant v. Subcleff*, NTSB Order No. EM-161 (1991).

been a factor in appellant's apparent belief that the degree of risk in anchoring where he attempted to was lower than the warnings suggested. Nonetheless, as a matter of prudent seamanship, appellant should have nevertheless rejected any recommendation or course of action that would unnecessarily expose his heavily loaded vessel to any known and potentially catastrophic risk. We agree with the law judge's view to the effect that appellant's decision to navigate outside of the customary trackline for the voyage was a "colossal blunder," and no mere error of nautical judgment. See Decision and Order at 31.

With regard to appellant's previously unraised claim that the law judge abused his discretion in determining sanction, we disagree.⁵ Rather, we think the law judge correctly considered the risk of harm and reasoned that "[t]he severity of the casualty loss is relevant on the issue of what may reasonably have been foreseen by the... [appellant] and this in turn has probative value in determining what degree of care would have been exercised by a reasonably prudent person under the circumstances." Id. at 37. Compare *Commandant v. Wardell*, NTSB Order No. EM-149 (1988) (Suggesting that amount of monetary damages may not be an appropriate "aggravating" factor under 46

⁵We would not, of course, undertake to decide an objection to a law judge's decision based on a factual matter that the Vice Commandant had not had an opportunity to address. We do not feel similarly constrained where the question presented is one of law and where, as here, the Vice Commandant has given us his views on the issue.

CFR § 5.569(b)). We find no abuse by the law judge in assessing the six-month suspension.

ACCORDINGLY, IT IS ORDERED THAT:

1. The appellant's appeal is denied, and
2. The orders of the Vice Commandant and the law judge imposing a six-month suspension of appellant's mariner's license are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.